

CHAPTER 5

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ARTICLE 1

Cable Television System

Sec. 5-1-10. Franchise Agreement.

(a) This Franchise Agreement (hereinafter the "Agreement" or "Franchise Agreement") is made between the Town of Minturn, Colorado (hereinafter "Town" or "Franchising Authority") and Comcast of Colorado VI, LLC (hereinafter "Grantee").

(b) The Town, having determined that the financial, legal and technical ability of the Grantee is reasonably sufficient to provide the services, facilities and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein. (Ord. 14, 2008)

Sec. 5-1-20. Definitions.

For the purpose of this Franchise Agreement, capitalized terms, phrases, words and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. § 521, et seq., (the "Cable Act"), unless otherwise defined herein.

Customer means a person or user of the cable system who lawfully receives cable service therefrom with the Grantee's express permission.

Effective date of the agreement is June 18, 2008.

FCC means the Federal Communications Commission or successor governmental entity thereto.

Franchise means the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the cable system.

Franchise agreement or *agreement* shall mean this agreement and any amendments or modifications hereto.

Franchise area means the present legal boundaries of the Town as of the effective date and shall also include any additions thereto, by annexation or other legal means.

Franchising Authority means the Town or the lawful successor, transferee, designee or assignee thereof.

Grantee shall mean Comcast of Colorado VI, LLC.

Gross revenue means the cable service revenue derived by the Grantee from the operation of the cable system in the franchise area to provide cable services, calculated in accordance with

generally accepted accounting principles. *Cable service revenue* includes monthly basic, premium and pay-per-view video fees, advertising and home shopping revenue, installation fees and equipment rental fees. *Gross revenue* shall not include refundable deposits, bad debt, late fees, investment income, programming launch support payments, advertising sales commissions, or any taxes, fees or assessments imposed or assessed by any governmental authority.

Person means any natural person or any association, firm, partnership, joint venture, corporation or other legally recognized entity, whether for-profit or not-for-profit, but shall not mean the Franchising Authority.

Public way shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including but not limited to public utility easements, dedicated utility strips or easements dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the franchise area, which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the cable system. *Public way* shall also mean any easement now or hereafter held by the Franchising Authority within the franchise area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall, within their proper use and meaning, entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing, operating and maintaining the Grantee's cable system over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to the cable system. (Ord. 14, 2008)

Sec. 5-1-30. Grant of authority.

The Franchising Authority hereby grants to the Grantee a nonexclusive franchise authorizing the Grantee to construct and operate a cable system in the public ways within the franchise area and, for that purpose, to erect, install, construct, repair, replace, reconstruct, maintain or retain in any public way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments and other related property or equipment as may be necessary or appurtenant to the cable system, and to provide such services over the cable system as may be lawfully allowed. (Ord. 14, 2008)

Sec. 5-1-40. Term of franchise.

The term of the franchise granted hereunder shall be ten (10) years, commencing upon the effective date of the franchise, unless the franchise is renewed or is lawfully terminated in accordance with the terms of this franchise agreement and the Cable Act. (Ord. 14, 2008)

Sec. 5-1-50. Renewal.

Any renewal of this franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended. (Ord. 14, 2008)

Sec. 5-1-60. Reservation of authority.

Nothing in this franchise agreement shall:

(1) Abrogate the right of the Franchising Authority to perform any public works or public improvements of any description;

(2) Be construed as a waiver of any codes or ordinances of general applicability promulgated by the Franchising Authority; or

(3) Be construed as a waiver or release of the rights of the Franchising Authority in and to the public ways. The Grantee shall adhere to all provisions of the Franchising Authority's Municipal Code and Charter, as may be amended from time to time, to the extent that such provisions do not unilaterally modify or amend the terms of this agreement or are otherwise inconsistent with Section 15-1-380 of this Article. Moreover, nothing in this Section shall be interpreted to adversely impact the Grantee's right to challenge any Charter provision, ordinance or amendment to an ordinance that it believes to be inconsistent with this franchise agreement or applicable law. (Ord. 14, 2008)

Sec. 5-1-70. Permits and general obligations.

The Grantee shall be responsible for obtaining, at its own cost and expense, all generally applicable permits, licenses or other forms of approval or authorization necessary to construct, operate, maintain or repair the cable system, or any part thereof, prior to the commencement of any such activity. Construction, installation and maintenance of the cable system shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines and equipment installed by the Grantee for use in the cable system in accordance with the terms and conditions of this franchise agreement shall be located so as to minimize the interference with the proper use of the public ways and the rights and reasonable convenience of property owners who own property that adjoins any such public way. (Ord. 14, 2008)

Sec. 5-1-80. New grades or lines.

If the grades or lines of any public way within the franchise area are lawfully changed at any time during the term of this franchise agreement, then the Grantee shall, upon reasonable advance written notice from the Franchising Authority, which shall not be less than ten (10) business days, and at its own cost and expense, protect or promptly alter or relocate the cable system, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the public way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall notify the Grantee of such funding and make available such funds to the Grantee. (Ord. 14, 2008)

Sec. 5-1-90. Relocation at request of third party.

The Grantee shall, upon reasonable prior written request of any person holding a permit issued by the Franchising Authority to move any structure, temporarily move its wires to permit the moving of such structure, provided that:

(1) The Grantee may impose a reasonable charge on any person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and

(2) The Grantee is given not less than ten (10) business days' advance written notice to arrange for such temporary relocation. (Ord. 14, 2008)

Sec. 5-1-100. Restoration of public ways.

If, in connection with the construction, operation, maintenance or repair of the cable system, the Grantee disturbs, alters or damages any public way, the Grantee agrees that it shall, at its own cost and expense, replace and restore any such public way to a condition in a manner consistent with local, generally applicable ordinances. (Ord. 14, 2008)

Sec. 5-1-110. Safety requirements.

The Grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the cable system shall be performed in substantial accordance with applicable FCC or other federal and state regulations. The cable system shall not unreasonably endanger or interfere with the safety of persons or property in the franchise area. (Ord. 14, 2008)

Sec. 5-1-120. Trimming of trees and shrubbery.

The Grantee shall have the authority to trim trees or other natural growth overhanging any of its cable system in the franchise area so as to prevent contact with the Grantee's wires, cables or other equipment. All such trimming shall be done at the Grantee's sole cost and expense and following notification to the Franchising Authority. The Grantee shall be responsible for any damage caused by such trimming. (Ord. 14, 2008)

Sec. 5-1-130. Aerial and underground construction.

At the time of cable system construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the franchise area are underground, the Grantee shall place its cable system's transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the cable system's signal quality. In any region of the franchise area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the Grantee to construct, operate or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system-passive devices, amplifiers, power supplies, pedestals or other related equipment. (Ord. 14, 2008)

Sec. 5-1-140. Undergrounding and beautification projects.

In the event all users of the public way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, the Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. The Grantee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. The Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the public way. (Ord. 14, 2008)

Sec. 5-1-150. General service obligation.

(a) The Grantee shall make cable service available to every residential dwelling unit within the franchise area where the minimum density is at least thirty (30) dwelling units per mile and is within one (1) mile of the existing cable system. Subject to the density requirement, the Grantee shall offer cable service to all new homes or previously unserved homes located within one hundred twenty-five (125) feet of the Grantee's distribution cable.

(b) The Grantee may elect to provide cable service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be computed on a time-plus-materials basis to be calculated on that portion of the installation that exceeds the standards set forth above. (Ord. 14, 2008)

Sec. 5-1-160. Programming.

The Grantee shall offer to all customers a diversity of video programming services. (Ord. 14, 2008)

Sec. 5-1-170. No discrimination.

The Grantee shall not discriminate or permit discrimination between or among any persons in the availability of cable services or other services provided in connection with the cable system in the franchise area. It shall be the right of all persons to receive all available services provided on the cable system as long as such person's financial or other obligations to the Grantee are satisfied. Nothing contained herein shall prohibit the Grantee from offering bulk discounts, promotional discounts, package discounts or other such pricing strategies as part of its business practice. (Ord. 14, 2008)

Sec. 5-1-180. New developments.

The Franchising Authority shall provide the Grantee with written notice of the issuance of building or development permits for planned developments within the franchise area requiring undergrounding of cable facilities. The Franchising Authority agrees to require the developer, as a condition of issuing the permit, to give the Grantee access to open trenches for deployment of cable facilities and at least ten (10) business days' written notice of the date of availability of open trenches. (Ord. 14, 2008)

Sec. 5-1-190. Fees and charges to customers.

All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Grantee or any affiliated person for any cable service as of the effective date shall be in accordance with applicable FCC rate regulations. Before any new or modified rate, fee or charge is imposed, the Grantee shall follow the applicable FCC notice requirements and rules and notify affected customers, which notice may be by any means permitted under applicable law. (Ord. 14, 2008)

Sec. 5-1-200. Customer service standards; customer bills; privacy protection.

(a) Customer service standards. The Franchising Authority hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

(b) Customer bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to customers, and in a way that:

- (1) Is not misleading; and
- (2) Does not omit material information.

Notwithstanding anything to the contrary in Subsection (a) above, the Grantee may, in its sole discretion, consolidate costs on customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. § 542(c)).

(c) Privacy protection. The Grantee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto. (Ord. 14, 2008)

Sec. 5-1-210. Franchise fees.

The Grantee shall pay to the Franchising Authority a franchise fee in an amount equal to five percent (5%) of annual gross revenues received from the operation of the cable system to provide cable service in the franchise area; provided, however, that the Grantee shall not be compelled to pay any higher percentage of franchise fees than any other video service provider providing service in the franchise area. The payment of franchise fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. Each franchise fee payment shall be accompanied by a report prepared by a representative of the Grantee showing the basis for the computation of the franchise fees paid during that period. (Ord. 14, 2008)

Sec. 5-1-220. Franchise fees subject to audit.

(a) Upon reasonable prior written notice, during normal business hours at the Grantee's principal business office, the Franchising Authority shall have the right to inspect the Grantee's financial records used to calculate the Franchising Authority's franchise fees; provided, however, that any such inspection shall take place within two (2) years from the date the Franchising Authority receives such payment, after which period any such payment shall be considered final.

(b) Upon the completion of any such audit by the Franchising Authority, the Franchising Authority shall provide to the Grantee a final report setting forth the Franchising Authority's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the Franchising Authority with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a finally settled amount. For purposes of this Section, the term *finally settled amount(s)* shall mean the agreed-upon underpayment, if any, to the Franchising Authority by the Grantee as a result of any such audit. If the parties cannot agree on a final settlement amount, the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

(c) Any finally settled amount(s) due to the Franchising Authority as a result of such audit shall be paid to the Franchising Authority by the Grantee within thirty (30) days from the date the parties agree upon the finally settled amount. Once the parties agree upon a finally settled amount and such amount is paid by the Grantee, the Franchising Authority shall have no further rights to audit or challenge the payment for that period. The Franchising Authority shall bear the expense of its audit of the Grantee's books and records. (Ord. 14, 2008)

Sec. 5-1-230. Oversight of franchise.

In accordance with applicable law, the Franchising Authority shall have the right to, on reasonable prior written notice and in the presence of the Grantee's employee, periodically inspect the construction and maintenance of the cable system in the franchise area as necessary to monitor the Grantee's compliance with the provisions of this franchise agreement. (Ord. 14, 2008)

Sec. 5-1-240. Technical standards.

The Grantee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76. To the extent those standards are altered, modified or amended during the term of this franchise, the Grantee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The Franchising Authority shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC's rules. (Ord. 14, 2008)

Sec. 5-1-250. Maintenance of books, records and files.

(a) Books and records. Throughout the term of this franchise agreement, the Grantee agrees that the Franchising Authority may review the Grantee's books and records regarding customer service performance levels in the franchise area to monitor the Grantee's compliance with the provisions of this franchise agreement, upon reasonable prior written notice to the Grantee, at the Grantee's business office, during normal business hours and without unreasonably interfering with the Grantee's business operation. All such documents that may be the subject of an inspection by the Franchising Authority shall be retained by the Grantee for a minimum period of three (3) years.

(b) Proprietary information. Notwithstanding anything to the contrary set forth in this Section, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary

or confidential in nature. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to those employees, representatives and agents of the Franchising Authority that have a need to know in order to enforce this franchise agreement and who agree to maintain the confidentiality of all such information. The Grantee shall not be required to provide customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms *proprietary* or *confidential* include, but are not limited to, information relating to the cable system design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules or other information that is reasonably determined by the Grantee to be competitively sensitive. The Grantee may make proprietary or confidential information available for inspection but not copying or removal by the Franchise Authority's representative. In the event that the Franchising Authority has in its possession and receives a request under a state "sunshine," public records or similar law for the disclosure of information the Grantee has designated as confidential, trade secret or proprietary, the Franchising Authority shall notify the Grantee of such request and cooperate with the Grantee in opposing such request. (Ord. 14, 2008)

Sec. 5-1-260. Transfer of cable system or franchise or control of Grantee.

(a) Neither the Grantee nor any other person may transfer the cable system or the franchise without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld or delayed. No *transfer of control of the Grantee*, defined as an acquisition of fifty-one percent (51%) or greater ownership interest in the Grantee, shall take place without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for:

- (1) A transfer in trust, by mortgage, hypothecation or by assignment of any rights, title or interest of the Grantee in the franchise or in the cable system in order to secure indebtedness; or
- (2) A transfer to an entity directly or indirectly owned or controlled by Comcast Corporation.

(b) Within thirty (30) days of receiving a request for consent, the Franchising Authority shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the Franchising Authority has not taken final action on the Grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed granted. (Ord. 14, 2008)

Sec. 5-1-270. Insurance.

Throughout the term of this franchise agreement, the Grantee shall, at its own cost and expense, maintain comprehensive general liability insurance and provide the Franchising Authority certificates of insurance designating the Franchising Authority and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of one million dollars (\$1,000,000.00) for bodily injury or death to any one (1) person, one million dollars (\$1,000,000.00) for bodily injury or death of any two (2) or more persons resulting from one (1) occurrence, and one million dollars (\$1,000,000.00) for property damage resulting from any one (1) accident. Such policy or policies shall be noncancelable except upon thirty (30) days'

prior written notice to the Franchising Authority. The Grantee shall provide workers' compensation coverage in accordance with applicable law. The Grantee shall indemnify and hold harmless the Franchising Authority from any workers' compensation claims to which the Grantee may become subject during the term of this franchise agreement. (Ord. 14, 2008)

Sec. 5-1-280. Indemnification.

The Grantee shall indemnify, defend and hold harmless the Franchising Authority, its officers, employees and agents from and against any liability or claims resulting from property damage or bodily injury, including accidental death, that arise out of the Grantee's construction, operation, maintenance or removal of the cable system, including but not limited to reasonable attorneys' fees and costs, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify and defend the Franchising Authority within ten (10) business days of receipt of a claim or action pursuant to this Section. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority. (Ord. 14, 2008)

Sec. 5-1-290. System description and service.

(a) System capacity. During the term of this agreement, the Grantee's cable system shall be capable of providing a minimum of eighty-five (85) channels of video programming with satisfactory reception available to its customers in the franchising area.

(b) Service to school buildings. The Grantee shall provide free basic cable service and free installation at one (1) outlet to each public and private school, not including home schools, located in the franchise area within one hundred twenty-five (125) feet of the Grantee's distribution cable.

(c) Service to governmental and institutional facilities. The Grantee shall provide free basic cable service and free installation at one (1) outlet to each municipal building located in the franchise area within one hundred twenty-five (125) feet of the Grantee's distribution cable. *Municipal buildings* are those buildings owned or leased by the Franchising Authority for government administrative purposes and shall not include buildings owned by the Franchising Authority but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed. (Ord. 14, 2008)

Sec. 5-1-300. Notice of violation or default.

In the event the Franchising Authority believes that the Grantee has not complied with the material terms of the franchise, it shall notify the Grantee in writing with specific details regarding the exact nature of the alleged noncompliance or default. (Ord. 14, 2008)

Sec. 5-1-310. Grantee's right to cure or respond.

The Grantee shall have forty-five (45) days from the receipt of the Franchising Authority's written notice:

- (1) To respond to the Franchising Authority, contesting the assertion of noncompliance or default;

(2) To cure such default; or

(3) In the event that, by nature of the default, such default cannot be cured within the forty-five-day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that the cure will be completed. (Ord. 14, 2008)

Sec. 5-1-320. Public hearings.

In the event the Grantee fails to respond to the Franchising Authority's notice, or in the event that the alleged default is not remedied within forty-five (45) days or the date projected by the Grantee, the Franchising Authority shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Franchising Authority that is scheduled at a time that is no less than ten (10) business days therefrom. The Franchising Authority shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with a reasonable opportunity to be heard. (Ord. 14, 2008)

Sec. 5-1-330. Enforcement.

Subject to applicable federal and state law, in the event the Franchising Authority, after such public hearing, determines that the Grantee is in default of any material provision of the franchise, the Franchising Authority may:

(1) Seek specific performance of any provision that reasonably lends itself to such remedy as an alternative to damages or seek other equitable relief; or

(2) In the case of a substantial default of a material provision of the franchise, declare the franchise agreement to be revoked in accordance with the following:

a. The Franchising Authority shall give written notice to the Grantee of its intent to revoke the franchise on the basis of a pattern of noncompliance by the Grantee, including two (2) or more instances of substantial noncompliance with a material provision of the franchise. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a response from the Grantee or, upon receipt of the response does not agree with the Grantee's proposed remedy, it may then seek termination of the franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the franchise.

b. At the designated hearing, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the franchise shall be terminated. The public hearing shall be on the record, and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the Franchising Authority shall be in writing and shall be delivered to the Grantee by certified mail. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising

Authority *de novo* and to modify or reverse such decision as justice may require. (Ord. 14, 2008)

Sec. 5-1-340. Technical violation.

The Franchising Authority agrees that it is not its intention to subject the Grantee to penalties, fines, forfeitures or revocation of the franchise for so-called "technical" breaches or violations of the franchise, which shall include, but not be limited to, the following:

(1) In instances or for matters where a violation or a breach of the franchise by the Grantee was good-faith error that resulted in no or minimal negative impact on the customers within the franchising area; or

(2) Where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the franchise, or which were deemed to have prevented the Grantee from complying with a term or condition of the franchise. (Ord. 14, 2008)

Sec. 5-1-350. Competitive equity.

(a) The Grantee acknowledges and agrees that the Franchising Authority reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide cable services within the franchise area, provided that the Franchising Authority agrees that, within ninety (90) days of the Grantee's request, it shall amend this franchise to include any material terms or conditions that it makes available to the new entrant, or provide relief from existing material terms or conditions, so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. *Material terms and conditions* include, but are not limited to, franchise fees, insurance, system build-out requirements, security instruments, customer service standards, required reports and related record-keeping and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word-for-word-identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent. Video programming services delivered over wireless broadband networks are specifically exempted from the requirements of this Section.

(b) Notwithstanding any provision to the contrary, at any time that a nonwireless facilities-based entity, legally authorized by state or federal law, makes available for purchase by subscribers or customers, cable services or multiple channels of video programming within the franchise area without a franchise or other similar lawful authorization granted by the Franchising Authority, the Grantee may seek modification as per Subsection (a) above, or the term of Grantee's franchise shall, upon ninety (90) days' written notice from the Grantee, be shortened so that the franchise shall be deemed to expire on a date six (6) months from the first day of the month following the date of the Grantee's notice. (Ord. 14, 2008)

Sec. 5-1-360. Force majeure.

The Grantee shall not be held in default under, or in noncompliance with, the provisions of the franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the franchise) where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe

rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the cable system, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary. (Ord. 14, 2008)

Sec. 5-1-370. Notice.

All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first-class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the Franchising Authority:

Town of Minturn
302 Pine Street
P.O. Box 309
Minturn, CO 81645
Attn: Town Manager

To the Grantee:

Comcast Cable
Attn: Government Affairs Department
8000 East Iliff Avenue
Denver, CO 80231

The Grantee shall also contact the Town by telephone at (970) 827-5645 to ensure delivery of the notice. (Ord. 14, 2008)

Sec. 5-1-380. Entire agreement.

The franchise agreement, including all exhibits, embodies the entire understanding and agreement of the Franchising Authority and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this franchise agreement are superseded by this franchise agreement. (Ord. 14, 2008)

Sec. 5-1-390. Severability.

If any section, subsection, sentence, clause, phrase or other portion of this franchise agreement is for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect. (Ord. 14, 2008)

Sec. 5-1-400. Governing law.

This franchise agreement shall be deemed to be executed in the State and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State as applicable to contracts entered into and performed entirely within the State. (Ord. 14, 2008)

Sec. 5-1-410. Modification.

No provisions of this franchise agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchising Authority and the Grantee, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an appropriate resolution or order by the Franchising Authority, as required by applicable law. (Ord. 14, 2008)

Sec. 5-1-420. No third-party beneficiaries.

Nothing in the franchise agreement is intended to confer third-party beneficiary status on any member of the public to enforce the terms of this franchise agreement. (Ord. 14, 2008)

Sec. 5-1-430. No waiver of rights.

Nothing in this franchise agreement shall be construed as a waiver of any rights, substantive or procedural, the Grantee may have under federal or state law unless such waiver is expressly stated herein. (Ord. 14, 2008)

Sec. 5-1-440. PEG channel.

(a) The Franchising Authority receives public, educational and government access (PEG) programming from neighboring franchise entities. The Franchising Authority may request a PEG channel dedicated to subscribers in the franchise area, not to exceed a total of one (1) channel, so long as a threshold use requirement is met for the PEG access channels. If the Franchising Authority requests its own dedicated PEG channel, PEG-channel programming from other sources may be removed.

(b) In order to request a PEG channel, the Franchising Authority must demonstrate that there is sufficient programming at least eight (8) hours a day with nonrepetitive, locally produced programming, Monday through Saturday, for a minimum of six (6) consecutive weeks. The Franchising Authority must provide the Grantee with written, detailed documentation evidencing that the usage meets the threshold requirement for each channel. The Grantee shall have one hundred twenty (120) days to provide the requested additional capacity. Once the threshold is met and the additional capacity given, the PEG channel must maintain the threshold requirement. If the PEG channel fails to meet the threshold for four (4) consecutive months, the PEG channel position may be reclaimed by the Grantee upon sixty (60) calendar days' written notice. (Ord. 14, 2008)

Sec. 5-1-450. Grantee use of fallow time.

Because blank or under-utilized PEG channels are not in the public interest, in the event the Franchising Authority or other PEG access user elects not to fully program its channel(s), a Grantee may program unused time on those channels subject to reclamation by the Franchising Authority upon no less than sixty (60) days' notice. (Ord. 14, 2008)

ARTICLE 2

Electric Franchise

Sec. 5-2-10. Short title.

This Article shall be known and may be cited as the "Holy Cross Energy Franchise." (Prior code 5-61)

Sec. 5-2-20. Definitions.

For the purpose of this Article, the following terms shall have the meaning given herein:

Company refers to Holy Cross Energy, a Colorado corporation, its successors and assigns.

Council refers to the legislative body of the Town, known as the Town Council of the Town of Minturn, Colorado.

Facilities refers to all overhead and underground electric facilities, buildings and structures necessary to provide electricity into, within and through the Town, including but not limited to such essential apparatus, appliances, plants, systems, substations, works, transmission and distribution lines and structures, anchors, cabinets, cables, conduits, guy posts and guy wires, meters, microwave and communication facilities, overhead and underground lines, pedestals, poles, regulators, sectionalizers, switchgears, transformers, various pad-mounted and pole-mounted equipment, vaults, wires and all other related electrical equipment required for the distribution, generation, maintenance, operation, purchase and transmission of electrical energy.

Private easements refers to easements created and available only for use by the Company for its facilities, or by the Company and other selected users or utilities.

Public easements refers to easements created and available for use by any public utility for its facilities.

Residents refers to and includes all persons, businesses, industry, governmental agencies, and any other entity whatsoever, presently maintaining a residence, business, farm, ranch or other enterprise located within, in whole or in part, the boundaries of the Town.

Revenues, unless otherwise specified, refers to and is the gross amounts of money that the Company receives from its customers within the Town from the sale of electrical energy for any particular period of time.

Service area refers to all land inside the municipal boundaries of the Town, as of the enactment of the ordinance codified herein, and all land annexed within such boundaries hereafter, within the area certified to the Company by the Public Utilities Commission of the State of Colorado.

Streets and other public ways refers to streets, alleys, viaducts, bridges, roads, lanes and other public ways in the Town, subject to limitations stated herein.

Town is the Town of Minturn, Eagle County, Colorado, the municipal corporation as is now constituted or as the same may be enlarged or expanded from time to time through annexation. (Prior code 5-62)

Sec. 5-2-30. Grant of Franchise.

(a) Grant of right to serve. Subject to the conditions, terms and provisions contained in this Franchise, the Town hereby grants to the Company a nonexclusive right, privilege and authority to locate, build, install, construct, acquire, purchase, extend, maintain, repair and operate into, within and through all of the service area all necessary and convenient facilities for the purchase, generation, transmission and distribution of electrical energy. Such grant is made together with the nonexclusive right and privilege to furnish, sell and distribute said electrical energy to the residents for light, heat, power and other purposes.

(b) Scope of grant. Such grant includes the nonexclusive right and the obligation to furnish electrical energy using the Company's facilities, either overhead, underground or otherwise, on, over, under, along, across and through any and all streets and other public ways, on, over, under, along, across and through any extension, connection with, or continuation of, the same and/or on, over, under, along, across and through any and all such new streets and other public ways as may be hereafter laid out, opened, located or constructed within the service area. The Company is further granted the nonexclusive right, privilege and authority to excavate in, occupy and use any and all streets and other public ways and public easements. Any such excavation, occupation and use must be in accordance with Town standards and regulations, and will be undertaken under the supervision of the properly constituted authority of the Town for the purpose of bringing electrical energy into, within and through the service area and supplying electrical energy to the residents.

(c) Service to Town facilities. The Town hereby grants to the Company the nonexclusive right, privilege and authority to provide street and security lighting to the Town, and to serve all Town-owned or operated structures, plants, equipment or Town apparatus and facilities, including the right, privilege and authority to furnish, sell and distribute electrical energy necessary for such.

(d) Duration of Franchise. The ordinance codified herein shall be in full force and effect from and after its passage as by law required, and the terms, conditions and covenants hereof shall remain in full force and effect for a period of ten (10) years from and after such enactment. (Prior code 5-63)

Sec. 5-2-40. Recreational areas.

The Company shall not have the right to locate, build or construct facilities under, across or through public parks or recreational areas, open space or other Town-owned property located within the Town except as expressly set forth in this Franchise or with prior written approval granted by the

Town Council. This Article shall never be construed to limit the Company's rights of eminent domain as provided by law. (Prior code 5-64)

Sec. 5-2-50. Trees and shrubs.

The Company shall have the right to control the growth of trees and shrubs as may be reasonably necessary to protect its facilities. The Company may use machinery or other lawful methods to control such growth, but shall not use chemicals for such purpose. Annually, on a date mutually agreed to by both parties, representatives of each party shall meet and/or consult to discuss problems related to the means and methods of controlling such growth. Prior to cutting down or removing any tree, the Company shall consult with a representative of the Town for the purpose of determining whether such cutting or removal is the only reasonable and cost-effective means of protecting the Company's facilities. (Prior code 5-65)

Sec. 5-2-60. Location of Company's facilities.

Wherever reasonable and practicable, the Company will endeavor to install its facilities within public easements. The Company shall locate its facilities within the Town so as to cause minimum interference with any of the Town's facilities or property, including without limitation water lines, sewer lines, storm drains and the proper use of streets and other public ways, and so as to cause minimum interference with the rights or reasonable convenience of property owners whose property adjoins any of the said streets and other public ways. (Prior code 5-66)

Sec. 5-2-70. Restoration of public and private improvements.

Should it become necessary for the Company, in exercising its rights and performing its duties hereunder, to interfere with any sidewalk, graveled or paved street, road, alley, water line, sewer line, storm drain, or any other public or private improvement, the Company shall, at its own expense and in a quality workmanlike manner, repair or cause to be repaired and restored to its original condition such sidewalk, graveled or paved street, road, alley, water line, sewer line, storm drain or other public or private improvement after the installation of its facilities; provided, however, that upon failure of the Company to do such required repairs within a reasonable time and in a workmanlike manner, the Town may perform the required work and charge the Company for all reasonable costs thereof. (Prior code 5-67)

Sec. 5-2-80. Use of facilities.

The Company shall have the right to make such use of its facilities and other property owned by the Company, for uses other than the uses contemplated in this Article, as it deems proper, so long as such other uses do not interfere with its ability to supply electrical energy. (Prior code 5-68)

Sec. 5-2-90. Changed conditions; overhead.

If at any time it shall be necessary to change the position of any overhead electrical facilities of the Company to permit the Town to lay, make or change street grades, pavements, sewer mains, water mains, storm drains or other Town works, such changes shall be made by the Company at its own expense, after reasonable notice from the Town. This provision shall not apply to any changes that result from new development within the Town. The costs associated with changing overhead electric

facilities to accommodate such new development shall be borne by the developer, the Town or some other party, but not the Company. (Prior code 5-69)

Sec. 5-2-100. Compliance with Town requirements.

The Company shall comply with all Town requirements regarding curb and pavement cuts, excavating, digging and related construction, maintenance and operational activities except as otherwise provided for in this Article. (Prior code 5-70)

Sec. 5-2-110. Town review of construction and design.

Prior to construction of any significant facilities within the Town, if requested by the Town, the Company shall furnish to the Town the plans for such proposed construction. In addition, the Company shall assess and report on the impact of its proposed construction on the Town environment. Such plans and reports may be reviewed by the Town to ascertain, inter alia: (1) that all applicable laws, including building and zoning codes and air and water pollution regulations, are complied with; (2) that aesthetic and good planning principles have been given due consideration; and (3) that adverse impact on the environment has been minimized. (Prior code 5-71)

Sec. 5-2-120. Capital improvement projects.

The Company and the Town shall inform one another of any capital improvement projects anticipated within the Town that may impact the facilities or operations of either party. The party proposing such capital improvements shall inform the other party of the nature of such improvements within a reasonable time after plans for such improvements have been substantially formulated. Each party shall cooperate in the timely exchange of all necessary information, design data, drawings and reports to properly assess and evaluate the potential impacts of said improvements. (Prior code 5-72)

Sec. 5-2-130. Maintenance of facilities.

The Company shall install, maintain, repair, replace and upgrade its facilities to ensure both the adequacy of and quality of electric service to all residents. All excavation and construction work done by or under the authority of the Company shall be done in a timely and expeditious manner which minimizes the inconvenience to the Town and all residents. (Prior code 5-73)

Sec. 5-2-140. Town not required to advance funds.

Upon receipt from the Town of an authorization to proceed, and a promise to pay for construction, the Company shall extend its facilities to the Town for municipal uses therein or for any municipal facility outside the service area and within the Company's certificated territory, without requiring the Town to advance funds prior to construction. (Prior code 5-74)

Sec. 5-2-150. Scheduled interruptions.

The Company shall, whenever possible, give notice, either oral or written, to the Town and its affected residents, of planned service interruptions of significant duration. (Prior code 5-75)

Sec. 5-2-160. Cooperation with other utilities.

When undertaking a project of undergrounding, the Town and the Company shall work with other utilities or companies to attempt to have all lines undergrounded as part of the same project. The Company shall not be required to pay the costs of any other utility in connection with work under this Section. (Prior code 5-76)

Sec. 5-2-170. Rates, regulations, uniformity of service and upgrades.

(a) Furnishing electrical energy. The Company shall furnish electrical energy within the service area and to the residents thereof at the Company's applicable and effective rates and under the terms and conditions set forth in the Rate Schedules, Standards for Service, Rules and Regulations, and Service Connection and Extension Policies, adopted by and on file with the Company, subject only to regulations thereof as is provided by law. The Company shall not, as to rates, charges, service, facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any resident, provided that nothing in this grant shall be taken to prohibit the establishment from time to time of a graduated scale of charges and classified rate schedules to which any customer coming within an established classification would be entitled.

(b) Facility upgrades. The Company will, from time to time, during the term of this Franchise, make such improvements, enlargements and extensions of its facilities incorporating, when reasonable and practical, technological advances within the industry as the business of the Company and the growth of the Town justify, in accordance with its Standards for Service, Rules and Regulations, and Service Connection and Extension Policies for electric service concurrently in effect and on file with the Company, subject only to regulations thereof as is provided by law.

(c) Reliable supply of electricity. The Company shall take all reasonable and necessary steps to provide an adequate supply of electricity to its customers at the lowest reasonable cost consistent with long-term reliable supplies. If the supply of electricity to its customers should be interrupted, the Company shall take all necessary and reasonable actions to restore such supply within the shortest practicable time. In the event the Company's electric system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practicable time.

(d) Maps and regulations. The Company shall submit copies of its Standards for Service, Service Connection and Extension Policies, Rules and Regulations and maps of its facilities within the service area to the Town Clerk. All changes in such maps, Standards for Service, Rules and Regulations and policies, shall be submitted to the Town as the same may from time to time occur.

(e) Subdivision review. The Company shall analyze any subdivision plats or planned unit development plans submitted to it by the Town and respond to any request by the Town for information regarding the adequacy of its facilities necessary to serve such proposed plat or plan and answer any other questions posed to the Company by the Town regarding said plat or plan as are within the knowledge of the Company. The Company shall respond to said requests or questions within reasonable time limits set by the Town's subdivision regulations.

(f) Interrelationship of laws, rates, regulations and ordinances. The Company shall comply with all county, state or federal laws, and rules and regulations related to the subject matter hereof. The

Company also agrees to abide by all ordinances and resolutions of the Town, unless and except to the extent that this Article shall relieve the Company of the obligation to comply with the terms and conditions of such other ordinances or any other provisions hereof. The Company, from time to time, may promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the use of electrical energy and the payment therefor, and the interference with, or alteration of, any of the Company's property upon the premises of its customers as shall be necessary to provide a safe, continuous and uninterrupted service to each and all of such customers and the proper measurement thereof and payment therefor. Any such rules, regulations, terms and conditions must not be inconsistent with this Article, but no ordinance of the Town may regulate the Company's rates or charges for the furnishing of electrical energy, or shall lessen the safety of providing such energy to its customers, nor shall any such ordinance alter the manner in which service is extended to such customers. (Prior code 5-77)

Sec. 5-2-180. Use of Company facilities.

(a) Use of poles by Town. The Town shall have the right, without cost, to jointly use all poles and suitable overhead structures within the service area for the purpose of stringing wires thereon for any reasonable Town authorized use; which use shall not include the distribution or transmission of electricity; provided, however, that the Company shall assume no liability, nor shall it be put to any additional expense, in connection therewith, and said use shall not interfere in any unreasonable manner with the Company's use of the same or the use thereof by the Company's permittees, licensees or other existing users of such facilities. The Company agrees to permit Town licensees, permittees and franchisees, except those holding an electric utility franchise or license from the Town, to use its facilities upon reasonable terms and conditions to be contractually agreed upon with the Company, in writing.

(b) Joint use of trenches. If the Company installs new electric underground conduit or opens a trench or replaces such conduit, the Company shall provide adequate advance notice to permit additional installation of similar facilities in the same trench by the Town, or installation of other types of municipal facilities, subject to applicable rules and regulations. If the Town elects to use the trench, it will so notify the Company. The Town shall provide the materials at no expense to the Company. The Town shall reimburse to the Company only those monies paid by the Company to an independent contractor for labor costs to install Town-furnished materials by such independent contractor. The Company shall include copies of invoices from the independent contractor to substantiate the Company's request for reimbursement. If the installation of Town-furnished materials is performed solely by the Company's employees, there will be no labor charge to the Town. Such action by the Town shall not unnecessarily interfere with the Company's facilities or delay the accomplishment of the project. The Town shall be responsible for ensuring that required vertical and horizontal separations between its facilities and that of the Company's is strictly maintained. The Town and Company shall jointly hold each other harmless from any liability or damage resulting from their respective facilities being installed in a joint trench. (Prior code 5-78)

Sec. 5-2-190. Indemnification and police power.

(a) Town held harmless. The Company shall indemnify, defend and save the Town, its officers and employees, harmless from and against all liability or damage and all claims or demands whatsoever in nature arising out of the operations of the Company within the Town pursuant to this Franchise, and the securing of, and the exercise by the Company of, the Franchise rights granted in

this Article, and shall pay all reasonable expenses arising therefrom. The Town shall provide prompt written notice to the Company of the pendency of any claim or action against the Town arising out of the exercise by the Company of its Franchise rights. The Company will be permitted, at its own expense, to appear and defend or to assist in defense of such claim. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the Town harmless to the extent of any claim, demand or lien arising out of, or in connection with, any negligent act or failure to act by the Town or any of its officers, employees or agents unless the Company shall become obligated to indemnify, defend or hold the Town harmless by virtue of the comparative negligence laws of the State.

(b) Police power reserved. The right is hereby reserved to the Town to adopt from time to time, in addition to the provisions herein contained, such ordinances as may be deemed necessary in the exercise of its police power, provided that such regulations shall be reasonable and not destructive of the rights herein granted, and not in conflict with the laws of the State, or with orders of other authorities having jurisdiction in the premises. (Prior code 5-79)

Sec. 5-2-200. Franchise fee.

(a) Franchise fee. In consideration for the grant of this Franchise, the Company shall pay to the Town a sum equal to three percent (3%) of its gross revenues collected from the sale of electricity within the service area. Electric revenues received from service to the Town facilities will not be assessed a three-percent fee under this Section, nor will the Town be paid the three-percent fee from such revenues collected from Town facilities. To the extent required by law, the three percent (3%) shall be surcharged to the residents. This surcharge is in addition to any charges specified in the Company's tariffs and any applicable taxes.

(b) Change of franchise fee initiated by Town. The Town expressly reserves the right to notify the Company of its desire to revise the franchise fee to a different percentage of revenue prior to October 1 of the even-numbered years during the term of this Franchise, which revised franchise fee shall become effective on the next succeeding January 1, following notification. However, the maximum amount of the franchise fee shall be five percent (5%) of the gross revenues collected within the service area. Notification to the consumer shall be given by the Town no less than thirty (30) days prior to January 1, the effective date of the scheduled increase. All expenses associated with notification shall be paid entirely by the Town.

(c) Payment. Payment of the franchise fee shall be made by the Company to the Town on or before thirty (30) days after the end of each quarter of each calendar year for the preceding three-month period, but shall be adjusted for the portions of the calendar quarters at the beginning and at the end of this Franchise. All payments shall be made to the Town Treasurer.

(d) Revenue audit. For the purpose of ascertaining or auditing the correct amount to be paid under the provisions of this Article, the Company shall file with the Town Treasurer, or such other official as shall be designated by the Town from time to time, a statement, in such reasonable form as the Town may require, showing the total gross receipts received by the Company from the sale of electricity to residents within the service area for the preceding three-month period. The Town Treasurer or any official appointed by the Council shall have access to the books of said Company for the purpose of confirming the gross revenues received from operations within the service area.

(e) Correction of underpayment or overpayment. Should either the Company or Town discover either an underpayment or overpayment of the franchise fee, the party making such discovery shall inform the other party within a reasonable time. If the error is substantiated as an underpayment, the Company shall make payment of the deficiency within thirty (30) days of the date the error was substantiated. If the error is substantiated as an overpayment, a credit equal to the overpayment will be applied to the next Franchise payment due the Town.

(f) Occupation tax alternative. In the event that said franchise fee levied herein should be declared invalid and/or shall be set aside by a court of competent jurisdiction, then, and in such event, and in lieu thereof, the Town may thereafter levy an occupation tax upon the Company, not to exceed in any one (1) calendar year five percent (5%) of the gross revenues collected from the sale of electricity within the service area for that calendar year. Such occupation tax shall be adjusted for any franchise fees previously paid to the Town in such calendar year. In the event the Town shall enact such an occupation tax, in lieu of the franchise fee, all of the remaining terms, conditions and provisions of this Article shall remain in full force and effect for the period stated herein. Such occupation tax ordinance or enactment shall be designed to meet all legal requirements to ensure that it is not construed as an income tax.

(g) Franchise fee payment in lieu of other fees. The franchise fee paid by the Company is accepted by the Town in lieu of any occupation tax, license tax, permit charge, inspection fee, contractor's license fees or similar tax on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any lawful taxation upon its property or any other tax not related to the Franchise or the physical operation thereof and does not exempt the Company from payment of head taxes or other fees or taxes assessed generally upon business.

(h) Payment of expenses incurred by Town in relation to ordinance. At the Town's option, the Company shall pay in advance or reimburse the Town for expenses incurred in publication of notices and ordinances and for photocopying of documents arising out of the negotiations or process of obtaining this Franchise.

(i) Termination of Franchise. If this Franchise is terminated by either the Company or the Town for whatever reason, or is declared null and void, all franchise fees or occupation taxes levied herein shall be suspended as of the date the Franchise is legally terminated. Final payment of any franchise fee or occupation tax owed and due the Town shall be made on or before thirty (30) days after the date the Franchise is legally terminated. (Prior code 5-80; Ord. 15-2008 §1)

Sec. 5-2-210. Reports.

(a) Reports. The Company shall submit reasonable and necessary reports containing, or based upon, information readily obtainable from the Company's books and records as the Town may request with respect to the operations of the Company under this Franchise, and shall, if requested, provide the Town with a list of real property within the Town which is owned by the Company.

(b) Copies of tariffs. Upon request, the Company shall furnish the Town with copies of any tariffs currently in use. (Prior code 5-81)

Sec. 5-2-220. Administration.

(a) Amendments. At any time during the term of this Franchise, the Town through its Council, or the Company may propose amendments to this Franchise by giving thirty (30) days' written notice to the other party of the proposed amendment desired, and both parties thereafter, through their designated representatives, shall within a reasonable time, negotiate in good faith in an effort to agree upon a mutually satisfactory amendment. No amendment to this Franchise shall be effective until mutually agreed upon in writing by the Town and the Company and until all public notice requirements pursuant to state statutes, and ordinance requirements of the Town, have been met. This Section shall not apply to franchise fee changes under Section 5-2-200.

(b) Revocation of privileges by condemnation. In the event, at any time during the term of this Franchise, the Town shall condemn any of the facilities of the Company within the service area, and thereby revoke all or any part of the privilege and authority herein granted to the Company to serve the residents, then and in such event the Town shall pay to the Company just compensation as provided by the laws of the State for such rights and facilities by reason of such condemnation.

(c) Compliance impaired. Both the Company and the Town recognize there may be circumstances whereby compliance with the provisions of this Franchise is impossible or is delayed because of circumstances beyond the Company's or Town's control. In those instances, the Company or Town shall use its best efforts to comply in a timely manner and to the extent possible.

(d) Company's failure to perform. It is agreed that in case of the failure of the Company to perform and carry out any of the stipulations, terms, conditions and agreements herein set forth in any substantial particular, wherein such failure is within the Company's control and with respect to which redress is not otherwise herein provided, the Town, acting through its Council, may, after hearing, determine such substantial failure; and, thereupon, after notice given the Company of such failure, the Company may have a reasonable time, not less than ninety (90) days, unless otherwise agreed by the parties, in which to remedy the conditions respecting which such notice shall have been given. After the expiration of such time and the failure to correct such conditions, the Council shall determine whether any or all rights and privileges granted the Company under this Article shall be forfeited and may declare this Franchise null and void.

(e) Ownership of facilities. All facilities used or placed by the Company either within or outside the service area shall be and remain the property of the Company.

(f) Transfer of rights. The Company shall not transfer or assign any rights under this Franchise to a third party, excepting only corporate reorganizations of the Company not including a third party, unless the Town shall approve in writing such transfer or assignment. Approval of the transfer or assignment shall not be unreasonably withheld.

(g) Removal of facilities. Upon the expiration of this Franchise, if thereafter the Company facilities shall not be used for electric, telephone or cable TV purposes for a period of twelve (12) successive months, the Town shall have the option of having the Company remove such facilities or claim such facilities as its own. If the Town should require the Company to remove its facilities, such removal shall only apply to those facilities that are above ground and have a visual impact on the surrounding area. If the Town elects to have the Company remove the facilities, it shall give written notice to the Company within thirty (30) days after expiration of the twelve-month period above

described directing it to remove such facilities, and the Company shall remove the same no later than ninety (90) days after the date of such notice, unless the Company and the Town agree to a longer period within which removal shall occur. Any facilities, either underground or overhead, remaining after the twelve-month, thirty-day and ninety-day periods above described, that have not been expressly claimed by the Town or removed by the Company, shall be deemed to have been abandoned. Any cost incurred by the Town in removing abandoned facilities and any liability associated with facilities abandoned by the Company shall be the liability of the Company. For any facilities claimed by the Town, any liability associated with such facilities shall become the liability of the Town.

(h) Nonrenewal of Franchise; alternative electric service. If this Franchise is not renewed, or if it is declared null and void, or the Company terminates any service provided for herein for any reason, and the Town has not provided for alternative electric service to the residents, the Company shall not remove its facilities and shall be obligated to continue electric service to the residents until alternative electric service is provided. The Company will not withhold any temporary services necessary to protect the public. (Prior code 5-82)

Sec. 5-2-230. Community Enhancement Fund.

(a) Purpose. The Company is committed to programs designed to make a difference in people's lives and the communities in which they reside. The Company will voluntarily make monetary resources available to the Town for such programs and/or activities. Programs for which such funds shall be spent shall be limited to: (1) beautification projects; (2) energy conservation projects; (3) equipment and technology upgrades for schools; (4) scholarship funds; (5) acquisition of open space and/or park land and development thereof, (6) sponsorship of special community events; and (7) undergrounding of overhead electric and other utility lines. Funds made available under this Article may be spent for other purposes only with the express written consent of the Company. This program has been initiated solely by the Company; the Town has not made the program a requirement for this Franchise. Funding for this program is not a cost of doing business but is a voluntary contribution by the Company.

(b) Payments to the Fund. After enactment of the ordinance codified herein, the Company will establish an initial fund amount of two thousand dollars (\$2,000.00). The Company shall then make annual payments to the Fund equal to one percent (1%) of its prior year's gross revenues, prorated for the portions of the months at the beginning and end of the term of this Franchise, collected from the sale of electricity within the service area, or two thousand dollars (\$2,000.00), whichever amount is greater. Said payments shall be made into the Fund no later than February 15 of the year subsequent to the year in which the gross revenues are received by the Company.

(c) The Fund. The Fund established by the Company shall be maintained in a bank account in the name of the Town, but shall be maintained separately from all other funds and accounts held by the Town.

(d) Payments from the Fund. All payments from the Fund shall be for projects described in Subsection (a) hereof. Prior to any such expenditure, authorization to withdraw from the fund shall be given by resolution or ordinance duly enacted by the Council, and such resolution or ordinance shall clearly describe the nature and purpose of the project for which the expenditure is made. Prior to any expenditure, the Town shall notify the Company of its intended use of the funds. Unless the

Company objects in writing prior to such expenditure, the Company shall have waived its right to object in the future if the funds are expended for the use identified in the notice.

(e) Audits. The Town may audit the Company's books related to gross revenues collected within the Town at any reasonable time and with reasonable prior notice. The Company may audit the fund account, expenditures from the Fund and resolutions and ordinances authorizing such expenditures at any reasonable time and with reasonable prior notice.

(f) Forfeiture of Enhancement Funds. The Company shall have the express right to temporarily suspend or terminate in full its annual contributions to the Enhancement Fund if it is determined that funds allocated and paid to the Town are being, or have been, misappropriated, administered with bias or discrimination or for other inappropriate actions.

(g) Advances of funds. The Company shall consider advances of funds, subject to the provisions of this Section, for all such projects that specifically involve undergrounding of overhead lines or projects acceptable to the Company which are related to the Company's existing facilities. The Town shall make all reasonable attempts to plan and budget use of the Fund without advancement of future funds. However, if the Town requests and the Company and the Town agree that it is in the mutual interest of both, the Company shall anticipate fund amounts to be available for up to three (3) years in advance. Both parties shall enter into a special agreement concerning the advanced funds. Any amounts advanced shall be credited against amounts to be expended in succeeding years until such advances are eliminated. (Prior code 5-83)

Sec. 5-2-240. Undergrounding.

(a) At consumer's request. If a customer within the Town should request that new facilities be installed underground, or for the conversion of existing overhead facilities to underground facilities, or if Town ordinances or resolutions require a customer or customers to install facilities underground, the Company shall proceed in accordance with its Line Extension Policy, Advice Letter Number 8, dated July 30, 1976 (herein "Line Extension Policy") and in accordance with its Policy Statement, Conversion From Overhead to Underground Facilities, June 15, 1988 (herein "Underground Conversion Policy"), as each may from time to time be amended.

(b) Town-requested undergrounding. Except for the Company's contributions to the Community Enhancement Fund, which may be used by the Town to pay for the undergrounding of the Company's facilities, any request, requirement imposed by resolution or ordinance, or other communication from the Town to the Company, asking or requiring the Company to underground new facilities or existing overhead facilities, or move, remove or replace existing underground facilities, shall be responded to in accordance with the provisions of the Company's Line Extension Policy, Underground Conversion Policy or other customary practice in use by the Company. The Town acknowledges receipt of a copy of both policies.

(c) Relocation of underground facilities. Nothing hereinabove shall be construed to obligate the Company to pay for the removal and relocation of its facilities where such is at the request or demand of a person, or a public or private entity under circumstances which require the party requesting or demanding such to pay for the relocation under other provisions hereof, or under the provisions of the Company's Line Extension Policy, Underground Conversion Policy or other customary practice in use by the Company.

(d) Governmental mandates. This Franchise or this Code, as either may be amended from time to time, shall not prohibit or limit the Company's right to enforce its collection of the increased costs of new underground construction, or conversion, in accordance with the provisions of the Company's Line Extension Policy, Underground Conversion Policy, customary practices of the Company or state law. Anything in this Franchise, or in this Code, that would be a contributing factor to the ultimate effect of causing the Company to convert overhead electric lines or facilities to underground lines or facilities, or which would result in new construction of lines or facilities being placed underground, when such could have been constructed overhead, shall be deemed to be a mandatory requirement of the Town. (Prior code 5-84)

Sec. 5-2-250. Changes in utility regulation.

(a) In the event new legislation materially affects the terms and conditions of this Article, the parties agree to renegotiate the affected terms and conditions in good faith. The parties hereto acknowledge that regulatory and legislative changes in the electric utility, gas utility and other energy industries are currently being discussed nationwide and statewide; that some changes in utility industry sectors have already been implemented; and that other changes may be made in the future, during the term of this Franchise. One likely scenario is the implementation of open access to electric customers, and other energy customers, making such customers available to all utilities, thus eliminating or limiting territorial protections. Under this scenario one utility may contract to sell a type of energy to a customer, while another utility transports the energy to the customer for a fee charged to the other utility or the customer.

(b) The parties agree, that insofar as future changes in the utility laws will allow, the Company shall always retain the right to bill customers for utility transportation services and energy sales within the service area if it is the provider of either the energy product or the transportation of such product. The parties agree that this will provide the most efficient and convenient utility service to the residents and provide assurance to the Town of franchise fee collection for each component charged for the sale and delivery of energy products within the service area. (Prior code 5-85)

Sec. 5-2-260. Successors and assigns.

The rights, privileges, franchises and obligations granted and contained in this Article shall inure to the benefit of and be binding upon the Company, its successors and assigns. (Prior code 5-86)

Sec. 5-2-270. Representatives.

Both parties shall designate from time to time in writing representatives to act as franchise agents for the Company and the Town. Such will be the persons to whom notices shall be sent regarding any action to be taken under this Article. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party. Until any such change shall hereafter be made, notices shall be sent to the Town Administrator and to the Company's General Manager. Currently the addresses for each are as follows:

For the Town:

Town Administrator
Town of Minturn
P.O. Box 309
243 Boulder Street
Minturn, CO 81645

For the Company:

Holy Cross Energy
Attention: General Manager
P.O. Drawer 2150
3799 Highway 82
Glenwood Springs, CO 81602

(Prior code 5-87)

Sec. 5-2-280. Severability.

Should any one (1) or more provisions of this Franchise be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft provisions that will achieve the original intent of stricken provisions. (Prior code 5-88)

Sec. 5-2-290. Entire agreement.

This Franchise constitutes the entire agreement of the parties. There have been no representations made other than those contained in this Franchise. (Prior code 5-89)

Sec. 5-2-300. Approval.

(a) Town approval. This grant of Franchise shall not become effective until approved by the Town in accordance with its ordinances and the statutes of the State.

(b) Company approval. The Company shall file with the Town Clerk its written acceptance of this Franchise and of all its terms and provisions within fifteen (15) business days after the final adoption of this Franchise by the Town. The acceptance shall be in the form and content approved by the Town Attorney. If the Company shall fail to timely file its written acceptance as herein provided, this Franchise shall become null and void. (Prior code 5-90)

ARTICLE 3

Gas and Electric Franchise

Sec. 5-3-10. Definitions.

For the purpose of this Article, the following words and phrases shall have the meaning given in this Section. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular

number include the plural number. The word *shall* is mandatory and *may* is permissive. Words not defined in this Section shall be given their common and ordinary meaning:

Company refers to and is Xcel Energy of Colorado, its successors, assigns, affiliates and subsidiaries.

Electric revenues refers to and is that portion of revenues which the Company receives from the sale of electricity.

Facilities refer to and are all apparatuses reasonably necessary for the Company to provide gas and electric service into, within and through the Town, including but not limited to plants, works, systems, substations, transmission and distribution structures, lines, equipment, pipes, mains, conduit, transformers, underground lines, gas compressors, meters, meter reading devices, communication and data transfer equipment, control equipment, gas regulator stations, street lights, wires, cable and poles.

Party or parties refers to and includes the Company and the Town, either singly or collectively, as the context requires.

Public Utilities Commission or *PUC* refers to and is the Public Utilities Commission of the State of Colorado or other state agency succeeding to the regulatory powers of the Public Utilities Commission.

Residents refers to and includes all persons, businesses, industry, governmental agencies and any other entity whatsoever presently located or hereinafter to be located, in whole or in part, within the territorial boundaries of the Town.

Revenues refer to and are those amounts of money which the Company receives from its customers within the Town from the sale of gas and electricity under rates authorized by the Public Utilities Commission as well as from the transportation of gas to its customers within the Town, and represents amounts billed under such rates as adjusted for refunds, net write-off of uncollectible accounts, corrections or regulatory adjustments. *Regulatory adjustments* refer to, by way of explanation but not limitation, credits, surcharges, refunds and pro forma adjustments pursuant to federal or state regulation.

Streets refer to and are streets, alleys, viaducts, bridges, roads, lanes and other public rights-of-way in the Town. *Streets* shall also include public easements and other public places within the Town that are suitable locations for the placement of facilities.

Town refers to and is the municipal corporation designated as the Town of Minturn, Eagle County, Colorado.

Town Council refers to and is the legislative body of the Town of Minturn, Eagle County, Colorado. (Prior code 5-91; Ord. 15-2008 §1)

Sec. 5-3-20. Grant of franchise.

(a) The Town hereby grants to the Company the right to use the streets within the Town to furnish, sell, transmit, transport and distribute gas and electricity to the Town and to all residents of the Town. The Town also hereby grants to the Company the right to acquire, construct, install, locate, maintain, operate and extend into, within and through the Town all facilities reasonably necessary to furnish, sell, transmit, transport and distribute gas and electricity within and through the Town. The rights granted in this franchise encompass the right to provide street lighting service to the Town. These rights shall extend to all areas of the Town as it is now constituted and to additional areas as the Town may increase in size by annexation or otherwise.

(b) If the boundaries of the Town are expanded during the term of this franchise, the Company shall extend service to residents in the expanded area at the earliest practicable time and in accordance with the Company's extension policy. Service to the expanded area shall be in accordance with requirements of the PUC and the terms of this franchise, including payment of franchise fees.

(c) The rights granted by this franchise are not, and shall not be deemed to be, granted exclusively to the Company, and the Town reserves the right to make or grant a similar franchise to any other person, firm or corporation.

(d) Except as otherwise specifically provided herein, the Town retains the right through the exercise of its police power to use, control and regulate the use of the streets, and the space above and beneath said streets. The Town retains the right to impose such other regulations as may be determined by the Town to be necessary in the reasonable exercise of its police power to protect the health, safety and welfare of the public. (Prior code 5-92)

Sec. 5-3-30. Term of franchise.

This franchise shall take effect upon its adoption and shall supersede any prior franchise grants to the Company by the Town. The term of this franchise shall be twenty (20) years. (Prior code 5-93)

Sec. 5-3-40. Franchise fee.

As consideration for the franchise rights granted herein, and in recognition of the fact that the grant to the Company of the right to use Town streets is a valuable right, the Company shall pay the Town a sum equal to three percent (3%) of all revenues received from the sale of electricity, and three percent (3%) of all revenues received from the sale and transportation of gas within the Town, excluding revenues received from the Town for the sale of gas and electricity to the Town. (Prior code 5-94)

Sec. 5-3-50. Surcharge of franchise fees.

The Company shall charge a franchise fee to all Town residents that use facilities of the Company in Town streets to obtain electricity and/or gas. No franchise fee shall be charged to the Town for street lighting service or for electric or gas service provided to the Town for its own consumption. (Prior code 5-95)

Sec. 5-3-60. Remittance schedule.

Franchise fees that are collected from residents shall be remitted by the Company to the Town in monthly installments not more than thirty (30) days following the close of each month. All payments shall be made to the Town Clerk. In the event that either the Town or the Company discovers that there has been an error in the calculation of the franchise fee payment to the Town, the error shall be corrected in the next monthly payment, subject to the following provisions: in the event an error by the Company results in an overpayment of the franchise fee to the Town in excess of five thousand dollars (\$5,000.00), credit for the over payment shall be spread over the same period the error was undiscovered; if the overpayment is five thousand dollars (\$5,000.00) or less, credit shall be taken against the next payment. In no event shall either party be required to refund any overpayment or underpayment more than three (3) years from the date of the overpayment or underpayment. (Prior code 5-96)

Sec. 5-3-70. Audit rights; protection of confidential information.

The Town Treasurer, or his or her agent, shall have access to the metering records of the Company during normal business hours upon reasonable notice for the purpose of auditing to ascertain that the franchise fee has been correctly computed and paid. Except as provided in Section 5-3-80 below, all information obtained by the Town Treasurer during a franchise fee audit shall be kept confidential and shall be utilized for the sole purpose of verifying that the franchise fee has been correctly computed and paid. (Prior code 5-97; Ord. 15-2008 §1)

Sec. 5-3-80. Enforcement of Town sales and use tax laws.

The Town may use the metered information obtained from franchise fee audits for the purpose of enforcing its sales and use tax laws. Upon request by the Town, the Company shall supply the Town with a list of all suppliers of electricity and/or gas that utilize Company facilities within the Town streets to sell electricity and/or gas to Town residents. (Prior code 5-98)

Sec. 5-3-90. Franchise fee payment in lieu of certain taxes and other fees.

The Town accepts payment of the franchise fee by the Company in lieu of any occupation tax, occupancy tax, license tax or similar tax or fee the Town might charge the Company or its subcontractors for the privilege of doing business in the Town, for the use or occupation of Town streets or for the installation, operation and maintenance of Company facilities. Payment of the franchise fee does not exempt the Company from any lawful taxation upon its property or from any other tax not related to the franchise or the occupation or use of Town streets, including the payment of head taxes, sales taxes or other fees or taxes assessed generally upon businesses. (Prior code 5-99)

Sec. 5-3-100. Share of joint use payments.

Within ninety (90) days following the close of each year, the Company shall pay the Town a sum equal to three percent (3%) of all revenues received from others for the placement of wires or other equipment on Company distribution poles and distribution conduit located in Town streets. (Prior code 5-100)

Sec. 5-3-110. Obligations regarding Company facilities.

The Company shall install, maintain, repair, renovate and replace its facilities with due diligence in a good and workerlike manner. Company facilities shall not interfere with the Town's water mains, sewer mains or other municipal uses of the streets. The Company shall construct and maintain its facilities in such a way as to minimize interference with trees and other natural features. The Company shall install underground all gas pipelines and all newly constructed electric distribution lines serving new residential subdivisions. All other Company facilities may be installed aboveground unless the Town or affected Town residents pay to the Company the additional costs incurred by the Company to construct, operate and maintain the facilities underground or as provided in Section 5-3-210 below. (Prior code 5-101)

Sec. 5-3-120. Excavation and construction.

All excavation and construction work performed by the Company shall be done in a manner that minimizes inconvenience to the public. All property disturbed by Company excavation or construction activities shall be restored by the Company at its expense to substantially its former condition. (Prior code 5-102)

Sec. 5-3-130. Relocation of Company facilities.

The Company shall relocate, at its expense, facilities in the streets that interfere with a public project undertaken and paid for by the Town with public funds. The Town shall provide at its expense sufficient right-of-way for the Company to relocate its facilities. The Company shall relocate its facilities at the request of the Town or other person to avoid interference with other nonpublicly financed projects, but the expense of the relocation and the new right-of-way shall be paid in advance by the Town or by the person conducting the project and requesting the relocation. Relocation shall be completed within a reasonable time after a request and payment therefor are made (if applicable). In the event that the Town requests the Company to relocate the same facilities within five (5) years of completion of a prior relocation, the subsequent relocation shall be at the Town's expense. Underground facilities shall be relocated underground. Aboveground facilities shall be relocated aboveground, unless the Town pays the additional cost of relocating aboveground facilities underground or as provided in Section 5-3-210 below. (Prior code 5-103)

Sec. 5-3-140. Town not required to advance funds.

Upon receipt of the Town's authorization for billing and construction, the Company shall extend its facilities to provide gas and/or electricity to the Town for municipal uses within the Company's certificated service area, without requiring the Town to advance funds prior to construction. Nothing in this Section shall release the Town from the obligation to pay for the extension of facilities once complete, in accord with the Company's electric and gas tariffs on file with the Public Utilities Commission. (Prior code 5-104)

Sec. 5-3-150. Compliance.

(a) The Company and all of its contractors shall comply with all applicable Town laws, ordinances and regulations. The Company shall require its contractors working in the streets to hold the necessary licenses and permits required by the Town.

(b) The Company will comply with all Town building and zoning codes and requirements regarding curb and pavement cuts, excavating, digging and related construction activities.

(c) The Town shall have the right to inspect any portion of the Company's facilities in the Town streets. The Company agrees to cooperate with the Town in conducting the inspection. (Prior code 5-105)

Sec. 5-3-160. Public Utilities Commission regulation.

(a) The provision of electric and gas service by the Company is regulated in whole or in part by regulatory agencies, including the Public Utilities Commission. The Company is obligated by law to comply with all lawful PUC orders, rules and regulations. The Town shall impose no obligation on the Company that interferes with the Company's ability to comply with lawful regulatory orders, rules and regulations.

(b) The Town agrees to assist the Company, if necessary, in obtaining PUC approval of a certificate to exercise the franchise rights conferred under this franchise, including negotiating a change to any provision of this Article which the PUC may require in order to obtain the certificate. (Prior code 5-106)

Sec. 5-3-170. Town use of distribution poles.

The Town shall have the right to attach, without paying a pole attachment fee, Town-owned police, fire and traffic control equipment, as long as such equipment is not used to produce revenue for any third party, to Company distribution poles within the Town in a manner that complies with the National Electric Safety Code, and all other applicable laws, rules and regulations. All other attachments must be pre-screened and approved by the Company, and the Company reserves the right to charge a reasonable fee for such attachments. The Town shall hold harmless and indemnify the Company for all liability associated with the Town's facilities on the Company's poles, including the payment of the Company's reasonable attorney and expert witness fees, if applicable. The Town's use of the Company's poles shall be in such a manner as not to constitute a safety hazard or to interfere with the Company's use of the poles. Any construction or reconfiguration that may, in the sole judgment of the Company, be required because of the Town's attachment of equipment to Company distribution poles shall be paid for by the Town. (Prior code 5-107)

Sec. 5-3-180. Trenches available for Town use.

If the Company opens a trench to install its facilities, the Company shall provide advance notice to the Town to permit the Town to install Town facilities in the same trench at the Town's expense. The Town's installation of its facilities shall not interfere with the Company's facilities or delay the commencement or completion of the Company's construction project. (Prior code 5-108)

Sec. 5-3-190. Town held harmless and indemnified.

The Company shall indemnify, defend and hold the Town harmless from and against all liability or damage and all claims or demands arising out of the Company's operations within the Town pursuant to this franchise. The Town shall provide prompt written notice to the Company of the pendency of any claim or action against the Town arising out of the exercise by the Company of its

franchise rights. The Company shall be permitted, at its own expense, to appear and defend or to assist in defense of such claim. The Company shall not be obligated to indemnify, defend or hold the Town harmless to the extent any claim, demand or lien arises out of or in connection with any intentional or negligent act or failure to act of the Town or any of its officials, agents or employees, or to the extent that any claim, demand or lien arises out of or in connection with the use of Town facilities. (Prior code 5-109)

Sec. 5-3-200. Payment of ordinance expenses.

The Company shall reimburse the Town for actual out-of-pocket expenses incurred in publishing notices and ordinances and conducting elections related to this franchise. (Prior code 5-110)

Sec. 5-3-210. Underground conversion at expense of Company.

(a) The Company shall allocate an annual amount, equivalent to one percent (1%) of the preceding year's electric revenues derived by the Company from the distribution of electricity to customers within the Town, for the purpose of undergrounding its overhead electric distribution facilities in the Town; provided that the undergrounding shall extend for a minimum distance of one (1) block or seven hundred fifty (750) feet, whichever is less, or as may be mutually agreed to by the parties. No relocation expenses which the Company is required to expend pursuant to Section 5-3-130 above shall be charged to this allocation.

(b) Any unexpended portion of the one percent (1%) of such electric revenues shall be carried over to succeeding years and, in addition, upon request by the Town, the Company agrees to anticipate amounts to be available under the preceding Subsection for up to three (3) years in advance. Any amounts so advanced shall be charged against otherwise available amounts which would have been expended in succeeding years until such advance is eliminated.

(c) The final decision as to which projects are selected for undergrounding rests with the Town, subject to the provisions of this Article. The specific scheduling of such projects rests with the Company, which shall make every reasonable effort to complete such projects within the time requested by the Town. (Prior code 5-111)

Sec. 5-3-220. Relocation expenses not charged against remaining balances.

No relocation expenses which the Company is required to expend pursuant to Section 5-3-130 above shall be charged against the balance remaining in the existing underground fund, nor shall the Town be responsible for such costs. (Prior code 5-112)

Sec. 5-3-230. System-wide undergrounding costs.

If the Public Utilities Commission requires a system-wide program or programs of undergrounding electric distribution facilities at the Company's expense, the Town shall not be responsible for paying the costs of any undergrounding pursuant to such program. (Prior code 5-113)

Sec. 5-3-240. Review of undergrounding projects.

The Town and the Company shall mutually plan in advance the scheduling of approved undergrounding projects to be undertaken according to this Article as part of the review and planning for other Company construction projects. The Town and the Company agree to meet, as required, to review the progress of the current undergrounding projects designated by the Town and to review planned future undergrounding projects. The Company need not approve an undergrounding project if it would create a significant risk to safety or operational integrity, but it shall provide to the Town written notification of any such nonapproval and the basis for nonapproval. (Prior code 5-114)

Sec. 5-3-250. Cooperation with other utilities.

When undertaking a project of undergrounding, the Town and the Company shall work with other utilities or companies which have overhead lines to attempt to underground all such lines as part of the same project. When other utilities or companies are placing their lines underground, the Company shall cooperate with those utilities and companies and undertake to underground Company facilities as part of the same project where financially, technically and operationally feasible. Notwithstanding the foregoing, nothing in this Section shall require the Company to pay for undergrounding of its distribution lines except as required by Section 5-3-130 of this Article. (Prior code 5-115)

Sec. 5-3-260. Consent of Town required.

The Company shall not transfer or assign any rights under this franchise to an unaffiliated third party, except by merger with such third party or except when the transfer is made in response to legislation or regulatory orders, unless the Town shall approve in writing such transfer or assignment. Approval of the transfer or assignment shall not be unreasonably withheld. (Prior code 5-116)

Sec. 5-3-270. Transfer fee.

In order that the Town may share in the value that this franchise adds to the Company's operations, any transfer or assignment of rights under this franchise requiring the approval of the Town under Section 5-3-260 above shall be subject to the condition that the transferee shall promptly pay to the Town a transfer fee, which shall be calculated by multiplying one million dollars (\$1,000,000.00) by a fraction of which the numerator equals the then-population of the Town which is served by the Company and the denominator equals the then-population of the City and County of Denver. Such transfer fee shall not be recovered from a surcharge placed only on the rates of Town residents. (Prior code 5-117)

Sec. 5-3-280. Town's right to condemn.

During the term of this franchise, the Town agrees not to condemn the facilities of the Company or to otherwise restrict the Company's opportunity to conduct business in the Town, except as specifically provided in Section 31-15-707, C.R.S. (Prior code 5-118)

Sec. 5-3-290. Operation of a municipal utility or competing distributors.

If, during the term of this franchise, the Town operates a municipal utility or issues to another entity a franchise to use the streets for the placement of electric and/or gas facilities, the Company shall no longer be required to collect and pay franchise fees under Section 5-3-40 of this Article unless substantially the same terms and conditions apply to the service provided by the Town or by the other entity. In addition, the following Sections of this Article shall no longer apply to the Company unless substantially the same provisions are applicable to all other electric and gas distributors, including the Town: Sections 5-3-60 through 5-3-80, 5-3-100 through 5-3-130, 5-3-150, 5-3-170, 5-3-180, 5-3-210 and 5-3-240 through 5-3-270. (Prior code 5-119)

Sec. 5-3-300. Uncontrollable forces.

Neither the Town nor the Company shall be in breach of this franchise if a failure to perform any of the duties under this franchise is due to uncontrollable forces, which shall include but not be limited to accidents, breakdown of equipment, shortage of materials, acts of God, floods, storms, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government and other causes or contingencies of whatever nature beyond the reasonable control of the party affected, which could not reasonably have been anticipated and avoided. (Prior code 5-120)

Sec. 5-3-310. Breach.

If the Company fails to perform any of the terms and conditions of this franchise and such failure is within the Company's control, the Town may notify the Company of the specific failure and shall allow the Company a reasonable time within which to remedy the failure. If the Company does not remedy the failure and the failure is of a substantial nature, the Town Council may terminate this franchise after a full evidentiary hearing. Termination of the franchise shall be by no less than a seventy-five-percent vote of all members of the Town Council. (Prior code 5-121)

Sec. 5-3-320. Judicial review.

Any such termination of the franchise shall be subject to judicial review as provided by law. (Prior code 5-122)

Sec. 5-3-330. Amendments.

This franchise may be amended only by a writing signed by both the Company and the Town, which is approved in the same manner as is required for the passage of the ordinance codified herein. (Prior code 5-123)

Sec. 5-3-340. Successors and assigns.

The rights, privileges, franchises and obligations, in whole or in part, granted and contained herein shall inure to the benefit of and be binding upon Xcel Energy, its successors, assigns, affiliates and subsidiaries. (Prior code 5-124)

Sec. 5-3-350. Third parties; representatives.

(a) Nothing contained herein shall be construed to provide rights to third parties.

(b) Both parties shall, from time to time, designate, in writing, representatives for the Company and the Town to whom notices shall be sent regarding any action to be taken under this Article. Notice shall be delivered in person or by certified mail to the persons and addresses hereinafter stated, unless the persons and addresses are changed at the written request of either party. Until such change shall be made, notices shall be sent as follows:

To the Town:

Town of Minturn:
Attn: Town Clerk
P.O. Box 309
Minturn, CO 81645

To the Company:

Assistant Corporate Secretary
Xcel Energy of Colorado
P.O. Box 840
Denver, CO 80201

With a copy to:

Legal Department
Xcel Energy of Colorado
P.O. Box 840
Denver, CO 80201

(Prior code 5-125)

Sec. 5-3-360. Surcharge to Town residents.

The Company shall be permitted to surcharge to residents of the Town the franchise fee payments it makes to the Town. The Company shall be permitted to surcharge to the residents of the Town any other payments it makes to the Town only to the extent and in the manner permitted by law or as otherwise ordered by the PUC. (Prior code 5-126)

Sec. 5-3-370. Severability.

Should any one (1) or more of the provisions of this Article be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided however, that the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a substitute term that will achieve the original intent of the parties hereunder. (Prior code 5-127)

Sec. 5-3-380. Entire agreement.

This Article constitutes the entire agreement of the parties with respect to the matters contained herein and supersedes any and all prior written or oral agreements, negotiations, correspondence, understandings and communications with respect to this franchise. (Prior code 5-128)

Sec. 5-3-390. Headings for reference only.

The headings in this Article are for reference only and convey no substantive rights or impose no substantive obligations on the parties. (Prior code 5-129)

Sec. 5-3-400. Responsibility for language.

The Town and the Company hereby acknowledge that each bears co-extensive and identical responsibility for the language in this franchise. In case of ambiguity, there shall be no presumptions based upon responsibility for drafting the franchise. (Prior code 5-130)

Sec. 5-3-410. No waiver of rights.

Neither the Town nor the Company waives any rights under the statutes and Constitution of the State of Colorado or of the United States except as otherwise specifically set forth herein. (Prior code 5-131)

Sec. 5-3-420. Prevailing party.

In any judicial or administrative action to enforce any of the terms or conditions of this franchise, the prevailing party shall be entitled to recover its costs and expenses incurred in such action, including reasonable attorney fees. (Prior code 5-132)

Sec. 5-3-430. Approval of franchise.

The Company shall promptly file, in writing, its acceptance of this franchise and of any amendment of this franchise following the Town's final approval of the same. The failure to file such an acceptance within forty-five (45) days of said final adoption shall be deemed an acceptance of such franchise or amendment thereof. (Prior code 5-133)

ARTICLE 4

Telephone Utilities Tax

Sec. 5-4-10. Levied; amount.

There is levied against every telephone utility which is engaged in the business of furnishing local exchange telephone service within the Town a tax on the privilege of engaging in such business. The annual amount of tax levied shall be equal to five dollars (\$5.00) per telephone account for which local exchange telephone service is provided within the Town on the effective date as provided in Section 5-4-30 of this Article, and upon each anniversary of the effective date. (Prior code 5-161)

Sec. 5-4-20. Scope.

The tax provided in this Article is upon the affected occupations and businesses in their performance of local functions, and is not a tax upon those functions relating to interstate commerce. (Prior code 5-162)

Sec. 5-4-30. Payment; due date.

The tax levied by this Article shall commence on March 1, 1977, and shall be due and payable in twelve (12) equal monthly installments, with the first such installment due thirty (30) days after the effective date. (Prior code 5-163)

Sec. 5-4-40. Statement; filing; contents.

Within thirty (30) days after the effective date as provided in Section 5-4-30 above, each telephone utility subject to the tax imposed in this Article shall file with the Town Clerk, in such form as the Town Clerk may require, a statement showing the total number of telephone accounts for which local exchange telephone service was provided within the Town on the effective date. Such statement shall be filed within thirty (30) days after each anniversary of the effective date, showing such accounts on the anniversary date. (Prior code 5-164)

Sec. 5-4-50. Right of inspection of records.

The Town, its officers, agents or representatives, shall have the right, at any reasonable time, to examine the books and records of any telephone utility which is subject to the tax imposed by this Article, and to make copies of the entries or contents thereof. (Prior code 5-165)

Sec. 5-4-60. Failure to pay; penalty.

If any telephone utility subject to this Article fails to pay the taxes as provided in this Article, the full amount thereof shall be due and collected from each company, and the same, together with an addition of ten percent (10%) of the amount of taxes due, shall be and is declared to be a debt due and owing from such utility to the Town. (Prior code 5-166)

Sec. 5-4-70. Failure to file statement; penalty.

If any officer, agent or manager of a telephone utility which is subject to the provisions of this Article shall fail, neglect or refuse to file any statement required by this Article within the time prescribed in this Article, such officer, agent or manager shall be punished, on conviction thereof, by a fine of not more than one thousand dollars (\$1,000.00); provided that each day after the statement becomes delinquent during which the officer, agent or manager shall so fail, neglect or refuse to file such statement shall be considered a separate offense. (Prior code 5-167)

Sec. 5-4-80. Prior offenses and liabilities.

All offenses committed and all liabilities incurred prior to March 1, 1977, the effective date of the ordinance codified in this Article, shall be treated as though all prior applicable ordinances and amendments thereto were in full force and effect for the purpose of sustaining any proper suit, action or prosecution with respect to such offenses and liabilities. All taxes, the liability for which has been

accrued under the terms of the provisions of Ordinance 146, Series of 1976, on or before the effective date of the ordinance codified in this Article, shall be and remain unconditionally due and payable, and shall constitute a debt to the Town, payable in conformity with the provisions and terms of Ordinance 146, Series of 1976, prior to the adoption of the ordinance codified in this Article. All of the terms and provisions of Ordinance 146, Series of 1976, shall be and remain in full force and effect for the purpose of the collection of payment of any and all such taxes due and payable thereunder, notwithstanding the provisions of the ordinance codified in this Article. (Prior code 5-168)

Sec. 5-4-90. Applicability.

The tax provided in this Article shall be in lieu of all other occupation taxes, or taxes on the privilege of doing business within the Town, on any telephone utility, subject to the provisions of this Article. (Prior code 5-169)

ARTICLE 5

Emergency Telephone Service

Sec. 5-5-10. Initial emergency telephone charge.

Pursuant to Section 29-11-101, et seq., C.R.S., all telephone access facilities within the Town shall have imposed upon them an emergency telephone charge in a monthly amount not to exceed seventy cents (\$.70). Upon recommendation of the Eagle County Emergency Telephone Service Authority, the Town Council may, by resolution, raise or lower the emergency telephone charge, but in no event shall such charge exceed seventy cents (\$.70). (Prior code 5-181)

Sec. 5-5-20. Collection of emergency telephone charge.

The telephone service suppliers providing the telephone service in the Town are hereby authorized to collect the emergency telephone charge imposed by this Article in accordance with Section 29-11-101, et seq., C.R.S. (Prior code 5-182)